



COMMONWEALTH of VIRGINIA
Department of Education

DATE: November 6, 2020

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

SUBJECT: U.S. Department of Education Issues Updated Guidance on Equitable Services under the CARES Act

[Superintendent's Memorandum #266-20](#) notified school divisions of a U.S. Department of Education (USED) [letter to chief state school officers](#) about equitable services provisions under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In the letter, USED stated that it will not appeal the U.S. District Court ruling that vacated the interim final rule (IFR) on equitable services provisions and that it will not take any action against school divisions that followed the USED guidance and/or the IFR prior to the court's ruling. Going forward, if meaningful consultation was not implemented and proportionate share calculations were not made for a grant under the CARES Act prior to the court's ruling, school divisions should calculate the value of equitable services under the CARES Act in accordance with Title I, Part A, Section 1117 of the *Every Student Succeeds Act* (ESSA).

On October 9, 2020, USED issued [updated guidance on equitable services under the CARES Act](#). School divisions that have not yet calculated the value of equitable services under one or more CARES Act grants may use this guidance as they engage in meaningful consultation. The new guidance is mostly aligned with Title I provisions for calculating and providing equitable services; however, school divisions should note the FAQs below appear to deviate from Section 1117 of ESSA.

- **Question 4:** The Title I calculation methodology specified in Section 1117 of ESSA is based on the low-income count of students who reside in Title I attendance zones, which may also include private school students who attend non-public schools outside of the geographic boundaries of the LEA. The guidance document suggests that this part of the methodology does not apply to the calculation and provision of equitable services under the CARES Act, and that instead, the LEA where the private school is located is

responsible for providing services regardless of student residency in Title I attendance zones.

- Questions 9 and 11: Under Section 1117 of ESSA, the value of equitable services is generated by the count of low-income students who reside in Title I attendance zones and attend non-public schools. If a non-public school does not enroll any such students, no funds are reserved to provide services to the school. The guidance document appears to indicate that a value of services should be made available to all private schools, even schools that do not have any low-income students who generate funds.

For school divisions planning to utilize the Title I methodology to calculate and provide equitable services under the CARES Act, consultation with local school board counsel is recommended to determine the extent to which the recent USED guidance will be followed. General questions about equitable services under the CARES Act may be directed to Equitable.Services@doe.virginia.gov.

JFL/lis